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FM AMEMBASSY PHNOM PENH
TO RUEHC/SECSTATE WASHDC IMMEDIATE 6622
INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY
RUEHBY/AMEMBASSY CANBERRA PRIORITY 2208
RUEHLO/AMEMBASSY LONDON PRIORITY 0381
RUEHOT/AMEMBASSY OTTAWA PRIORITY 0514
RUEHFR/AMEMBASSY PARIS PRIORITY 0531
RUEHKO/AMEMBASSY TOKYO PRIORITY 3063
RUCNDT/USMISSION USUN NEW YORK PRIORITY 2139
RHHMUNA/HQ USPACOM PRIORITY
RUEHGV/USMISSION GENEVA PRIORITY 1427

C O N F I D E N T I A L SECTION 01 OF 03 PHNOM PENH 000887

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STATE FOR EAP/MLS AND S/WCI; GENEVA FOR RMA

E.O. 12958: DECL: 05/07/2016

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SUBJECT: KRT JUDGES NAMED: THE GOOD, THE BAD, AND THE UGLY

Classified By: A/DCM Margaret B. McKean; Reasons 1.5 (b) and (d).

11. (C) Summary. On May 7, the Cambodian Government announced the names of the Cambodian and international judges selected by the Supreme Council of the Magistracy and approved by the King. The results are a mixed bag of good, middling, and poor choices. Initial soundings within the diplomatic community suggest that, while some missions are unhappy over a few picks, no one at the moment is planning to issue a negative statement. The Japanese Embassy met with PM Hun Sen on May 8, and aired concerns over some names on the list. The EU did the same in a private May 8 meeting with Deputy Prime Minister Sok An. The list symbolizes a missed opportunity for the RGC to put its best judicial face on the proceedings, but at least a few of the best candidates did make the cut. Both American names are listed in the reserve categories. End Summary.

Judges Chosen: A Mixed Bag

12. (C) After months of waiting, the Cambodian government on May 4 issued a Royal Decree naming the Cambodian and international judges to the Khmer Rouge Tribunal. The final decree follows very closely a list leaked to several NGOs in early April. The names are as follows:

Judges in the Trial Chamber

Mr. Nil Nonn
Mr. Thou Mony
Mr. Ya Sokhan
Ms. Silvia Cartwright (New Zealand)
Mr. Jean-Marc Lavergne (France)

Reserve: Mr. You Ottara; Ms. Claudia Fenz (Austria)

Judges in the Supreme Court Chamber

H.E. Kong Srim
Mr. Som Sereyvuth
Mr. Sin Rith
Mr. Ya Narin
Mr. Motoo Noguchi (Japan)
Ms. Agnieszka Klonowiecka-Milart (Poland)
Mr. Chandra Nihal Jayasinghe (Sri Lanka)

Reserve: Mr Mong Monichariya; Mr. Martin Karopkin (U.S.)

Co-Investigating Judges

Mr. You Bun Leng
Marcel Lemonde (France)

Reserve: Mr. Thong Ol; International (to be announced)

Co-Prosecutors

Ms. Chea Leang
Mr. Robert Petit (Canada)

Reserve: H.E. Chuon Sun Leng; Mr. Paul Coffey (U.S.)

Pre-Trial Chamber

H.E. Prak Kimsan
H.E. Ney Thol
Mr. Huot Vuthy
Mr. Rowan Downing (Australia)
Ms. Katinka Lahuis (Netherlands)

Reserve: Mr. Pen Pichsaly; International -- none

Note: We have emailed separately to the desk on the unclassified system the same list of names with what bio

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information we know on each of them.

Who's Who Among the Judges

13. (C) The best judges selected appear to be the

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investigating judge -- You Bun Leng (who currently sits on the Appeals Court) and Supreme Chamber President Kong Srim (Deputy General Prosecutor of the Appeals Court). Both were listed by the Open Society Justice Initiative as "best" picks among Cambodia's jurists. You Ben Leng has received strong, favorable comments from a variety of NGOs and legal analysts.

The reserve prosecutor, Chuon Sun Leng is also a good pick, as is You Ottara -- the reserve judge for the trial chambers.

Chuon Sun Leng is the Deputy Prosecutor General of the Supreme Court while You Ottara is a Supreme Court judge. Nil Nonn, President of the Trial Chamber was a good pick, albeit not a standout choice. The UN Human Rights Office, however, gave Nil Nonn high marks for cooperation with their office on several cases of interest. Sin Rith, one of the choices for the Supreme Chamber, is considered a good selection. Mong Monichariya, a reserve judge for the Supreme Chamber, is also highly thought of among NGOs. While some of the best picks are on the Supreme Chamber, that chamber may see the least action since it is an appeals body. (Note: The Japanese Embassy was particularly irritated that as the Tribunal's largest donor, the Japanese nominee was chosen for the Supreme Chamber. The Japanese had wanted him to play a more prominent role in the Trial Chamber. End Note.)

14. (C) In the bad category are included the other two judges in the Trial Chamber -- Thou Mony, an Appeals Court judge and Ya Sokhan. Both are considered politically biased and not good picks. Thou Mony was one of the Appeals Court judges who released Hun Sen's nephew in the appeals process after the young man was convicted in a high-profile car accident and a shooting incident that resulted in three deaths. He also ruled on behalf of Ky Teck in connection with tQpasQear's controversial Bar Association elections that were highly criticized by Bar Association membership. The Bar Association still remains moribund and divided. Ya Sokhan has been disciplined by the Supreme Council of the Magistracy (SCM) in 2005 and forcibly transferred to Bantey Meanchey. Likewise, Huot Vuthy, one of the nominees for the

Pre-Trial Chamber, was also disciplined by the SCM and a record placed in his personnel file. Both men appear to have been sanctioned for holding detainees in jail beyond the allowed period. Thong Ol (reserve investigating judge) is considered very close to the CPP and presided over independent radio producer Mam Sonando's defamation hearing that sent Sonando to prison.

15. (C) In the ugly category is Ney Thol, the President of the Military Court who had presided over last year's political show trial of opposition parliamentarian Cheam Channy -- a procedure that was legally flawed and roundly criticized by the international community. Helen Jarvis has countered criticism of Ney Thol's appointment by saying that military law will be relevant to the proceedings and therefore he is qualified to join the Tribunal. Sean Vissoth has argued to us that Ney Thol has worked on the Ta Mok and Duch (two detainees implicated in the Khmer Rouge genocide) cases for the past 6-7 years. Ney Thol is a member of the Pre-Trial Chamber, which will meet only to resolve differences between either the co-investigating judges or the co-prosecutors. While the pre-Trial Chamber has the potential to play an important role in deciding who will be prosecuted, respected Cambodian jurist Kim Sathavy suggested privately to us that the body might play a very limited role. It is yet to be seen.

16. (C) The Cambodian selection for prosecutor, Chea Leang, is a niece by marriage to one of Sok An's cousins. Her nomination has raised questions of nepotism; Helen Jarvis has told us that the linkage to Sok An is not strong and dismissed any notion that her nomination was orchestrated by the DPM. Margo Picken of the UN Human Rights Office tells us that she has been moderately cooperative with her office. Likewise, the Japanese Embassy, which has some legal advisors in Cambodia, believes that her appointment can be defended on the basis of merit.

17. (C) The saving points are You Ben Leng as investigating judge - a key position; and Nil Nonn as President of the Trial Chamber. The two other Cambodian judges within the Trial Chamber (Ya Sokhan and Thou Mony) are problematic. Margo Picken and others point to the strong international judges, particularly Dame Silvia Cartwright from New Zealand

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as positive counterweights. The Pre-Trial Chambers where Ney Thol and Huot Vuthy will be working is also weak.

What Others are Saying

18. (C) Phnom Penh-based diplomats have privately expressed disappointment with the choice of Ney Thol, but also some relief that relatively good jurists were picked for some important jobs. Margo Picken spoke for many in saying that it was not the best possible list, but also not the worst. The UN office here and the Canadian, German, French, British and Japanese embassies have all told us they do not intend to criticize the list publicly. That said, visiting EU Ambassador Hamburger raised concerns about Ney Thol in a meeting with DPM Sok AN May 8 and received no clear reply except that the judges had met the criteria established in the 2004 agreement with the UN. The Japanese Ambassador raised concerns regarding some the Cambodian judicial personnel with Prime Minister Hun Sen on May 8; Hun Sen reportedly said that the selection process would have to be addressed by the Minister of Justice, as the PM has remained independent of the matter. (Comment: This is a bit of dodge, given the PM's direct involvement in high profile legal decisions in the past. End Comment.)

19. (C) Comment. While the judicial talent on hand in Cambodia is quite limited, many had hoped that the Cambodian government would use the KRT to turn a page on the country's troubled legal system and present the best possible face of

the Cambodian judiciary -- one that would underscore the government's stated commitment to judicial independence and legal reform. However, the list of judges falls short of Cambodia's judicial "dream team" and constitutes a missed opportunity to rebut critics who repeatedly decried the delays and lack of transparency in the selection process. The presence of jurists who presided in highly political cases -- especially Ney Thol who ruled in the widely condemned Cheam Channy case -- provides further grounds for suspicion of RGC commitment. NGOs like LICADHO and ADHOC were not surprised by the list, saying the Tribunal has always been about RGC control. The diplomatic community and the UN are unlikely to publicly criticize the list, even if they may express concerns privately. In sum, the Cambodian judicial roster does not inspire the level of confidence in the proceedings that we would have liked to have had at this stage. However, it is too soon to prejudge how things will play out once the Tribunal begins its work, when the dynamic between Cambodian and international jurists will likely set the tone for the proceedings. End Comment.

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